



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CG Docket Nos. 11-116 and 09-158; CC Docket No. 98-170; FCC 12-42]**

**Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”);  
Consumer Information and Disclosure; Truth-in-Billing Format**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) proposes additional rules to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as “cramming.” Several commenters in this proceeding support additional measures to prevent cramming, including requiring wireline carriers to obtain a consumer’s affirmative consent before placing third-party charges on telephone bills (*i.e.* “opt-in”). There also is support for adopting anti-cramming rules for Commercial Mobile Radio Service (CMRS) and Voice over Internet Protocol (VoIP) service. The Commission seeks further comment on whether it should take additional steps to prevent wireline cramming, including “opt-in”, possible solutions to CMRS cramming, and any developments of VoIP cramming.

**DATES:** Interested parties may file comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 11-116, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission’s Electronic Comment Filing System (ECFS), through the Commission’s Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and **CG Docket No. 11-116**.

- Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.
- In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554, or via email to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Lynn Ratnavale, [Lynn.Ratnavale@fcc.gov](mailto:Lynn.Ratnavale@fcc.gov) or (202) 418-1514, or Melissa Conway, [Melissa.Conway@fcc.gov](mailto:Melissa.Conway@fcc.gov) or (202) 418-2887, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (FNPRM), FCC 12-42, adopted on April 27, 2012, and released on April 27, 2012, in CG Docket Nos. 11-116 and 09-158, and CC Docket No. 98-170. Simultaneously with the FNPRM, the Commission also issued a Report and Order in CG Docket Nos. 11-116 and 09-158, and CC Docket No. 98-170. The full text of the FNPRM and copies of any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc.,

Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplication contractor at its website, [www.bcpiweb.com](http://www.bcpiweb.com), or by calling (202) 488-5300.

Document can also be downloaded in Word or Portable Document Format (PDF) at

<http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill>.

Pursuant to 47 CFR 1.1200 et. seq., this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

## **INITIAL PAPERWORK REDUCTION ACT OF 1995**

The FNPRM seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirement, the Commission will publish another notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

### **SYNOPSIS**

1. In the FNPRM, the Commission seeks comment on additional potential measures to prevent cramming, including an “opt-in” requirement for wireline carriers. The FNPRM also seeks comment on possible solutions to CMRS cramming and any developments on VoIP cramming.
2. The record reflects significant concern that bill formatting changes and greater transparency alone are not sufficient to deter the widespread problem of cramming. Commenters suggest a number of stronger measures, such as prohibiting all or most third-party charges from being placed on telephone bills or requiring carriers to obtain a consumer’s affirmative consent before placing third-party charges on their own bills to consumers (“opt-in”). Consumer groups argue that a requirement for consumer consent or an affirmative opt-in to receive third-party charges should apply to consumers’ wireline, VoIP, and/or CMRS bills and that any requirement to separate third-party charges on the bills of those consumers who opt-in should apply across all platforms. The Commission seeks additional comment on whether it should adopt additional measures, such as an opt-in approach, and, if so, the best way to implement them. To adequately evaluate an opt-in approach, a more detailed record is needed, especially with respect to the structure and mechanics of an opt-in approach and how opt-in could be implemented for existing consumers whose carrier already may be placing non-carrier third-party charges on their telephone bills. The Commission also seeks to bolster the record with respect to its authority to adopt additional anti-cramming measures.
3. The Commission seeks additional comment on whether an “opt-in” approach is warranted and how it should be structured. Should an opt-in requirement apply only to new consumers or to all

consumers? If “opt-in” should only apply to new consumers or some other subset of existing consumers, then what is the basis – both factual and legal – for such a distinction? What are the distinguishing characteristics of each subset of consumers and their respective risk of being crammed that may justify disparate treatment? Should an opt-in requirement, if adopted, apply to all third-party charges or should third-party charges for telecommunications services be exempt? Should the exemption apply to all third-party telecommunications services? Would consumers likely benefit from an “opt-in” mechanism with respect to non-telecommunications-related third-party charges? Would consumers adequately anticipate the need for third-party billing before they opt-in or opt-out? Are there any analogous opt-in requirements that might inform our decisions here? Would the benefits to consumers be different under one opt-in structure versus another? Would an opt-in approach be more or less warranted if it applied only to new consumers?

4. Assuming the Commission decides to adopt an “opt-in” approach, the secondary set of issues revolves around how an “opt-in” measure should be implemented from a practical standpoint. Should the Commission adopt an all-or-nothing opt-in where the consumer has an opportunity to opt-in or reject all third-party charges, including long distance carrier charges? Should the consumer have the choice to opt-in or reject carrier and non-carrier charges separately, or should the consumer have an opportunity to indicate that they choose not to receive third-party billing charges unless or until they are consulted about specific individual charges from third parties?

5. With respect to procedure, there is the question of the best format for implementing the “opt-in” mechanism. What would be the best procedures to obtain a consumer’s opt-in to third-party charges?

6. The Commission seeks comment on the specific costs of the measures discussed in the FNPRM, and ways the Commission might mitigate any implementation costs. Do smaller wireline carriers face unique implementation costs and, if so, how might we address those concerns?

7. The Commission also seeks comment on where and when a consumer should be made aware of the opportunity to opt-in to third-party billing charges. Should carriers inform consumers at the point of sale, such as during the telephone conversation between the consumer and the carrier’s customer service

representative or while using online sign-up procedures? Should notification of the option to opt-in also appear in website, print, or in-store advertising? Should existing consumers be informed on their bills? Should the consumer's current opt-in status be disclosed on every bill so that he or she will know whether to be looking for such charges on that bill? The Commission seeks comment regarding the duration of each opt-in approval and what happens when a consumer decides to revoke a prior opt-in approval or to give new opt-in approval. What procedures should be required for a consumer to change an opt-in election? Should a consumer be able to opt-in to specific types of third-party charges, from a specific third party, or for a specific period of time? Do carriers have the technical ability to distinguish such charges today and, if not, what would be the cost to obtain that ability? The Commission seeks comment on the level of consumer interest in this type of "opt-in" approach, the potential consumer benefits, as well as the complexity and costs such a scenario poses for carriers.

8. Are there additional measures the Commission could take to combat cramming? Are there measures beyond an "opt-in" approach or alternative approaches that we should consider and might be more effective at combating cramming?

9. Cramming appears to be less a problem for CMRS consumers than for wireline consumers, but it may be on the rise. The Commission seeks comment on potential regulatory and non-regulatory measures to address the issue. Are there technological solutions that might help consumers, such as apps for mobile phones? What steps has industry taken to date and what steps might it take in the future to protect CMRS consumers? Are there any steps the Commission should consider to help CMRS consumers combat cramming? To the extent that cramming issues develop for VoIP services, the Commission seeks comment about that issue and answers to the above questions. The Commission requests that commenters address implementation costs of any other proposed anti-cramming measures and any questions of legal authority.

10. The Commission seeks comment on the respective roles of carriers and billing aggregators in screening charges for purposes of existing blocking options and how these roles might change if the Commission adopts an "opt-in" requirement.

11. The Commission seeks comment on its authority to adopt an “opt-in” requirement. Would the Commission’s section 201(b) authority to regulate practices “for and in connection with” telecommunications services support such requirements? Does the Commission’s Title I ancillary authority provide support for such requirements? Are there other sources of authority? Would such measures present First Amendment concerns, and, if so, how might the Commission address those concerns?

## **INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS**

12. As required by section 603 of the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines indicated in the **DATES** section of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

### **Need for, and Objectives of, the Proposed Rules**

13. The FNPRM contains proposals that: (1) a carrier, if it already offers blocking, ask all new subscribers whether they would like to “opt-in” to blocking of third-party charges on their bills and record the subscriber’s election for purposes of blocking or not blocking third-party charges on that subscriber’s bill; and (2) carriers that already offer blocking include on all telephone bills and on their websites for use by existing customers, information about the option to block third-party charges from their telephone bills and record any subsequent request by a current customer to block or not block third-party charges on that subscriber’s bill.

14. The record reflects that cramming primarily has been an issue for wireline telephone consumers. The rules adopted in the Report and Order do not address aspects of cramming which are being considered in the FNPRM, including growth in CMRS cramming and how the Commission should

address any cramming issues that develop for VoIP services. Adopting further requirements will provide consumers with additional safeguards.

### **Legal Basis**

15. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1-2, 4, 201, 258, and 403 of the Communications Act of 1934, as amended 47 U.S.C. 151-152, 154, 201, 258, and 403.

### **Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. Under the Small Business Act, a “small business concern” is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) meets any additional criteria established by the SBA. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. The FNPRM seeks comment generally on mobile providers of voice, text, and data services. However, as noted in Section IV of the FNPRM, the Commission seeks comment on the scope of entities that should be covered by the proposals contained therein.

17. Incumbent Local Exchange Carriers (“Incumbent LECs”). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates

that most providers of local exchange service are small entities that may be affected by the adopted rules and policies. Thus, under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

18. Competitive Local Exchange Carriers (“Competitive LECs”), Competitive Access Providers (“CAPs”), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year.

19. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

20. Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede

data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the FNPRM.

21. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 1,383 firms that operated that year. Of those, 1,368 firms had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) telephony services. An estimated 261 of these firms have 1,500 or fewer employees and 152 firms have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms are small.

22. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size

standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.

23. According to Commission data, 434 carriers report that they are engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees. Therefore, the Commission estimates that 222 of these entities can be considered small.

#### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

24. The FNPRM contains proposals that: (1) a carrier, if it already offers blocking, ask all new subscribers whether they would like to “opt-in” to blocking of third-party charges on their bills and record the subscriber’s election for purposes of blocking or not blocking third-party charges on that subscriber’s bill; and (2) carriers that already offer blocking include on all telephone bills and on their websites for use by existing customers, information about the option to block third-party charges from their telephone bills and record any subsequent request by a current customer to block or not block third-party charges on that subscriber’s bill.

25. These proposed rules may necessitate that some carriers make changes to their existing billing formats and/or disclosure materials which would impose some additional costs to carriers. However, some carriers may already be in compliance with many of these requirements and therefore, no additional compliance efforts will be required.

#### **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather

than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. Any economic burden these proposed rules may have on carriers is outweighed by the benefits to consumers. However, in the FNPRM, the Commission specifically asks how to minimize the economic impact of our proposals. For instance, the Commission seeks comment on the specific costs of the measures discussed in the FNPRM, and ways the Commission might mitigate any implementation costs. The Commission also particularly asks whether smaller carriers face unique implementation costs and, if so, how the Commission might address those concerns. In addition, for example, the Commission seeks comment on alternatives for how a carrier should obtain a consumer's opt-in to third-party charges, if the Commission decides to adopt an "opt-in" approach. Finally, the Commission seeks comment on the overall economic impact these proposed rules may have on carriers because it seeks to minimize all costs associated with these proposed rules.

#### **Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

28. None.

#### **ORDERING CLAUSES**

29. Pursuant to the authority contained in sections 1-2, 4, 201, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-152, 154, 201, and 403, the FNPRM IS ADOPTED.

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

